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ILLINOIS COMMERCE COMMISSION

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COMMONWEALTH EDISON COMPANY)

Petition for expedited approval of implementation of
a market-based alternative tariff, to become effective
on or before May 1, 2000, pursuant to Article IX and
Section 16-112 of the Public Utilities Act.)

) Docket No. 00-0259

BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois, by James E. Ryan, Attorney General of the State of Illinois ("the People" or "AG") hereby file their exceptions to the Hearing Examiner's Proposed Order ("HEPO") in the above-entitled matter, issued on April 21, 2000.

INTRODUCTION

The parties to this case have been presented with a Hobson's choice: approve Edison's proposed Rider PPO-MI for one year without the hearing required by law or delay the implementation of an alternative to the neutral fact-finder process that the parties agree has not properly reflected market rates for electric power and energy. This dilemma is the result of serious procedural deficiencies that not only severely limit the parties ability to evaluate the factual and legal issues but render the consideration of any supporting expert opinions essentially meaningless. Indeed, the People maintain that any evaluation of the merits of the testimony, by the parties, the Hearing Examiner or the Commission itself, is inappropriate, given that this testimony has not been properly treated as "evidence" as required by the Commission's own rules and given that the HEPO does not contain the legally required findings mandated by the Public Utilities Act ("the Act"). 220 ILCS 5/1-101 et seq. Not surprisingly, the procedural

shortcomings outlined in the People's Comments, filed on April 18th, have, in fact, resulted in the HEPO containing the expected legal errors, as the People describe in their exceptions below.

The People refrained from commenting on the merits of ComEd's proposal in their comments filed on April 18th and must continue to do so. In fact, we cannot properly comment upon testimony discussed by the Hearing Examiner, given that the extraordinarily accelerated schedule made any initial evaluation impossible. All parties were directed to take a position on the merits of ComEd's proposal in comments filed with the Hearing Examiner on April 18th before having the opportunity to obtain copies of testimony filed by parties other than ComEd. Three days later, the Proposed Order was issued. It contains a cursory discussion of the testimony, all of it untested by traditional evidentiary methods. The People are now unfortunately compelled to direct our attention to the unconventional and inappropriate procedure that has been adopted to consider the very serious legal and policy issues presented by ComEd's petition.

Exception No. 1

The People take exception to the Proposed Order's failure to issue findings on whether or not ComEd's proposed tariffs under Rider PPO-Power Purchase Option (Market Index) ("Rider PPO-MI") are just and reasonable. Such findings are the minimum findings required by law in order to comply with the Public Utilities Act.

Argument

ComEd's petition requests that the Commission (1) "approve" the implementation of their proposed market based alternative methodology and tariffs and (2) find their wholesale offer "just and reasonable." Under the company's wholesale offer, customers would be provided with "...opportunities to purchase wholesale full requirements power and energy for designated

based tariffs. Energy sold under this offer would be scheduled by ComEd and would be as firm as native load.” Petition at para. 6. ComEd makes this “alternative tariff” offer contingent upon the Commission’s finding that the offer itself is “just and reasonable.” Id. The Company asks for “approval” of Rider PPO-MI, but does not request a finding that rates pursuant to the market based index tariffs are just and reasonable.

The Commission must reject ComEd’s request. Unless it permits tariffs to go into effect without hearing, the Commission can only “approve” tariffs upon making a finding that rates under such tariffs are just and reasonable. A finding that rates are just and reasonable cannot occur unless it is supported by record evidence contained in an order issued pursuant to the provisions of Section 10-103 of the Act. The rates contained in ComEd’s Rider PPO-MI tariffs, whether offered as part of a wholesale offering or independently, have not been found to be just and reasonable under the statutory requirements of the Act. Therefore, for the reasons set forth below, the Commission must reject ComEd’s proposed Rider PPO-MI.

Proposed tariffs for utility service go into effect subject to the provisions of Section 9-201 of the Act. First, following the submission of proposed tariffs by the utility, the Commission analyzes the proposed rate change and reaches a preliminary conclusion as to whether or not the tariffs will be permitted to go into effect without determining their propriety, i.e., whether they are just and reasonable, through an investigation conducted pursuant to the notice and hearing provisions of Section 9-201. See Antioch Milling Co. v. Public Service Co. of Northern Ill., 4 Ill.2d 200, 123 N.E.2d 302.

The Commission has the discretion to pursue one of two alternatives. Under the first, the Commission decides not to conduct a 9-201 hearing and the tariffs go into effect. In these circumstances, no finding need be made by the Commission that the tariffs are just and

reasonable. City of Galesburg v. Illinois Commerce Commission, 47 Ill.App.3d 499, 362 N.E.2d 78 (1977) Under the second option, the Commission decides that the tariffs will not go into effect until a 9-201 hearing is held. The tariffs are then suspended and an investigation into their propriety is investigated in a hearing conducted pursuant to Section 9-201 and according to the procedural requirements of Section 10-103 of the Act.¹

In this case, the Commission failed to issue an order stating that it would not suspend ComEd's tariffs. Instead, it decided to hold a hearing, in effect exercising its discretion and conceding that a "just and reasonable" finding was needed. Unfortunately, the Commission unilaterally, and without waiving its usual procedures, decided that only a "paper hearing" would be held. Needless to say, this paper hearing did not permit cross-examination of expert witnesses who had submitted testimony on the merits of the proposal. In addition, this unusual and unprecedented proceeding did not allow adequate opportunity for discovery and required parties to file legal arguments with the Hearing Examiner before reviewing the "evidence." Thus, in effect, no real "hearing" was held at all. The Illinois Supreme Court has concluded that "[m]anifestly there is no hearing when the party does not know what evidence is offered or considered, and *is not given an opportunity to test, explain or refute.*" See Balmoral Racing Club, Inc., et al. v. Illinois Racing Board et al., 151 Ill.2d 367, 404, 603 N.E.2d 489, 505 (1992), citing Interstate Commerce Comm'n. v. Louisville & Nashville R.R. Co., 227 U.S. 88 (1913) (emphasis added by Balmoral). Furthermore, administrative hearings must be conducted in a manner appropriate to the nature of the issues being considered. Lakeland Construction Co. v. Department of Revenue, 62 Ill.App. 3d 1036, 379 N.E.2d 859 (1978). Given the fact that the

¹ Section 10-101 of the Act incorporates by reference the specific provisions of the Illinois Administrative Procedure Act. See 220 ILCS 5/10-101.

Department of Revenue, 62 Ill.App. 3d 1036, 379 N.E.2d 859 (1978). Given the fact that the Commission just last year conducted a thorough evidentiary hearing before rejecting a separate ComEd proposal for a market-based index tariff, there is no credible reason to dispense with a similar proceeding in this docket.

Moreover, hearings conducted pursuant to Section 9-201 must be held in accordance with Section 10-101 of the Act, which states

In the conduct of any investigation, inquiry or hearing the provisions of the Illinois Administrative Procedure Act, including but not limited to Section 10-25 and 10-35 of that Act, shall be applicable and the Commission's rules shall be consistent therewith.

220 ILCS 5/10-101.

The unauthorized² paper hearing sanctioned by the Commission is inappropriate for the nature of this case and seriously tramples on the due process rights of the parties, in violation of the Illinois Administrative Procedure Act and the Public Utilities Act. Consequently, this proceeding cannot (and, in fact, did not) result in any findings that rates filed under ComEd's proposed Rider PPO-MI tariffs are just and reasonable. Hence, rates under those tariffs cannot subsequently be found "just and reasonable" as part of ComEd's wholesale offer.

Proposed Language

The following language should be inserted on page 24 of the Proposed Order:

The Commission cannot approve, as a matter of law, Commonwealth Edison's proposed rates under Rider PPO-Power Purchase Option (Market Index). No hearing has been held to consider evidence in support of and in opposition to such rates. The Commission is therefore unable to make a final determination that such rates are just and reasonable because it has not been provided with evidence sufficient to legally support its findings, as required by the Public Utilities Act. The Commission, therefore, must reject the request contained in the instant Petition that

² Under the Commission's Rules of Practice, paper hearings may be held only when all parties, the Staff and the Hearing Examiner assent. 83 Ill. Adm. Code 200.525.

For all the reasons described above, the Commission is also unable to find ComEd's proposed wholesale offer "just and reasonable." Under Sections 9-201 and 9-101 of the Public Utilities Act, rates charged for utility service, no matter how offered, must be just and reasonable, and no tariffs may be filed offering service under rates not found to be just and reasonable. Packaging the Rider-PPO (MI) rates as an alternative to Rider-PPO (NFF) rates cannot override this statutory requirement. Consequently, although the Commission welcomes future proposals for market based tariffs designed to promote the development of an effectively competitive electricity market, as a matter of law, we must reject ComEd's Petition to the extent it requests an "just and reasonable" finding for its wholesale offer.

Exception No. 2

The HEPO fails to explain the "good cause" that warrants the Commission's waiver of 45 day notice rule contained in Section 9-201 of the Act.

Argument

Section 9-201(a) of the Act requires that utilities give 45 days notice to the Commission and the public prior to changing any rate, charge or practice which effects any rate or charge. 220 ILCS 5/9-201. The Commission may waive this 45-day notice requirement only upon showing of good cause, by an order specifying the changes to be made, the time when they will take effect and how the changes will be filed and published. Id.

The HEPO reviews this provision of the Act, and notes that requests for exemption from this 45-day notice requirement are "far from unheard of." HEPO at 24. The HEPO further notes that several parties have pointed out that ComEd violated this 45-day notice provision and that there had not been "good cause" shown to justify an exemption. Id. However, without any analysis or explanation, the HEPO then declared that based on the record and its own proposed modifications to the tariff, there has been good cause shown. Id. There is no discussion of what "good cause" consists of or what other circumstances have prompted the Commission to find "good cause" in the other cases hinted at in the HEPO. Id.

The Illinois Appellate Court held that Section 10-201(e)(iii) of the PUA requires the Commission orders to provide “findings or analysis sufficient to allow an informed judicial review”, and therefore, the Commission must set forth more reasoning and analysis than would be acceptable from a circuit court. Citizen’s Utility Board v. Illinois Commerce Comm’n, 291 Ill. App. 3d 300, 683 N.E.2d 938 (1997) (“CUB II”), citing Citizen’s Utility Board v. Illinois Commerce Comm’n, 166 Ill. 2d 111, 120-126, 651 N.E.2d 1089 (1995) (“CUB I”); 220 ILCS 5/10-201(e)(iii). Where the Commission’s findings are “not supported by substantial evidence based on the entire record of evidence,” the order is subject to reversal on appeal. CUB I, 166 Ill. 2d at 132-133, citing 220 ILCS 5/10-201(e)(iv)(A).

The HEPO provides no analysis of the issue of what is “good cause”, and there is no indication that its finding of “good cause” is supported by substantial evidence. Under the best circumstances, the HEPO would be subject to remand on appeal under Section 10-201(e)(iii). 220 ILCS 5/10-201(e)(iii). Otherwise the HEPO’s findings would be reversed due to the absence of substantial supporting evidence, as required under Section 10-201(e)(iv)(A). 220 ILCS 5/10-201(e)(iv)(A).

Proposed Language

The final sentence of paragraph 6 of Section IV, “Commission Conclusions” should be deleted and replaced with the following:

ComEd has failed to demonstrate “good cause” to justify granting their expedited schedule. Nor did ComEd request an order from the Commission granting an exemption from the 45-day notice requirement pursuant to Section 9-201(a) of the PUA. 220 ILCS 5/9-201. Therefore, ComEd’s tariff changes cannot be approved and may not go into effect on May 1st.

Exception No. 3

The People take exception to the fact that the HEPO proposes a decision on the merits in this case, in spite of numerous misgivings regarding its ability to properly evaluate those merits and explicit acknowledgment of the need for more formal review of the substance of the “so-called” evidence presented in this proceeding.

Argument

The HEPO spends almost no time on what should be a threshold matter to any case, due process of law. Due process was not afforded to parties of this case, and therefore the HEPO should have never have reached the merits of ComEd’s proposal. See People ex rel. The Illinois Commerce Commission v. Operator Communications, Inc., d/b/a/ Oncor Communications, Inc., 281 Ill. App. 3d 297, 666 N.E. 2d 830, 834 (1996) (“Administrative proceedings must conform to the requirements of due process of law”), citing Distola v. Department of Registration and Education, 72 Ill. App. 3d 977, 982, 391 N.E.2d 489, 29 Ill. Dec. 226 (1979).

Under the Illinois Administrative Procedure Act (“IAPA”), all parties in a contested case must be afforded an opportunity for a hearing, to respond and present evidence and argument. 5 ILCS 100/10-25. Further, the Commission has stated that the opportunity for discovery, use of expert witnesses, unrestricted cross-examination, and initial and reply briefs protects the due process rights of the parties before it. See Commonwealth Edison Company, Ill. C. C. Dkt. 87-0043, (July 16, 1987), 84 PUR 4th 469, 494 (citing the procedures of the Public Utilities Act and the constitutional mandates of due process and fair hearing).

In Balmoral Racing Club, Inc. v. The Illinois Racing Board, 151 Ill. 2d 367, 603 N.E.2d 489, 177 Ill. Dec. 419 (1992), the Illinois Supreme Court enumerated the minimal guarantees of procedural due process to include reasonable notice, the right to examine witnesses, to present witnesses, and to receive a fair and impartial hearing. 603 N.E.2d at 506. The Illinois Appellate

Court has consistently held that due process requires the right to present evidence, to argue on one's own behalf, to cross-examine adverse witnesses and to challenge evidence. Piotrowski v. State Police Merit Board, 85 Ill. App. 3d 373, 406 N.E.2d 863 (1980) citing Lakeland Construction Co. v. Department of Revenue, 62 Ill. App. 3d 1036, 1040, 379 N.E.2d 859 (1978); Flick v. Gately, 328 Ill. App. 81, 65 N.E.2d 137 (procedural protections of the PUA require that a forum be available to properly test evidence). Indeed, the Commission "is required by statute to provide an evidentiary hearing if there exists a dispute concerning a material fact in a contested case". Oncor, 666 N.E. 2d at 834.

The HEPO acknowledges that parties have "substantive concerns" regarding proposed tariff's structure and implementation. HEPO at 25. The HEPO lays out many of the arguments made by parties against the adoption of ComEd's proposal, including: insufficient notice for the tariff change; the "thinness" of the market; the parties inability to conduct discovery; ComEd's failure to show that its proposal is in conformance with the statute; ComEd's failure to meet its burden of showing that its proposal is just and reasonable; and the lack of any oversight of Altrade and Bloomberg PowerMatch. HEPO at 9-15. After laying out these arguments, the HEPO does not address or evaluate these arguments in any way throughout the remainder of the Proposed Order. The HEPO notes the IIEC's argument that the Commission loses its jurisdiction to act where the statutory notice, hearing and evidentiary requirements of the Act are not followed, and therefore any order it enters under such circumstances is void. HEPO at 13. Yet, despite the fact that it fails to resolve this threshold question, the HEPO does not discuss this issue further. Indeed, the HEPO does not supply any analysis on these concerns, opting rather to defer due consideration of the issues until a full year after the tariff is implemented. HEPO at 25.

Throughout its conclusion, the HEPO betrays an all too certain knowledge that the

schedule of this case was insufficient to evaluate the merits of ComEd's proposal. In discussing ComEd's proposal, the HEPO suggested that a more comprehensive review of the proposal, utilizing a less restrictive schedule, would be necessary before the proposal should be adopted on a long term basis. HEPO at 25-26. The HEPO declared that there "should be some means in place by which this proposal can be formally reviewed in the future, particularly considering the short review period of this case along with the substantive concerns expressed by other parties", and "that there should be an additional opportunity for the Commission to formally review the merit's of ComEd's proposal". HEPO at 25.

The opportunity to formally review the merits of ComEd's proposal must be afforded the parties in a proper hearing, with a chance to cross-examine witness and file briefs, prior to approving any change in the tariff regardless of how it is modified by the HEPO. Deferring due process would violate Illinois law and substantially prejudice the parties' interests, in violation of Section 10-201(e)(iv)(D).

Proposed Language:

Paragraphs 8-15 of Section IV, "Commission Conclusion," should be deleted and replaced with the following:

The lack of proper notice, a proper hearing or the opportunity for cross-examination prevents the Commission from addressing the merits of this case. First, as stated above, ComEd's proposal requested a expedited schedule that would place its tariffs changes into effect within thirty days of filing their petition without any showing of "good cause". The Commission did not pass an order as required by Section 9-201(a) to excuse this notice requirement. Therefore, it would be a direct violation of the PUA for the Commission to approve ComEd's tariff changes to be effective on May 1, 2000.

Second, the accelerated schedule did not provide parties with the opportunity for a hearing or a opportunity to cross-examine witnesses. Since denial of these basic due process elements did not allow for a full and impartial hearing of all parties, the Commission is prevented by law from reaching the merits of ComEd's petition.

Section 200.525(a) of the Commission Rules of Procedure allows for the waiver of these rights by unanimous approval of all parties, the Staff and the Hearing Examiner. However, no such approval was shown in this case, and the “paper hearing” in this case was held in violation of the Commission Rules.

Therefore, the Commission finds that a proper hearing consistent with the due process requirements addressed above must be held at a future date, at which time, provided that ComEd does not amend their proposal, there will no longer be a notice problem.

Under section V. Findings and Ordering Paragraphs, delete finding (4) and replace with the following:

- (4) The Commission must reject ComEd’s proposed tariff changes, because the schedule of this Docket violated the due process rights of all parties such that there was lack of proper notice, no opportunity to cross-examine witnesses, and no opportunity to respond to other parties testimony prior to the HEPO.**

IT IS THEREFORE ORDERED by the Commission that the ComEd proposal cannot be approved at this time, on this record, and a proper hearing that provides the due process elements discussed in “Commission’s Conclusions” should be held at a future date

Exception No. 4

The People take strong exception to the schedule in the instant case, which illogically, unreasonably and unlawfully required parties to submit final arguments to the Hearing Examiner prior to being served with testimony that was subsequently entered into the record as evidence.

Argument

As noted above, the right to cross-examine witnesses is a necessary due process element. The HEPO’s requirement that all parties *simultaneously* submit comments and testimony deprived parties of their right to cross-examine such submitted testimony. Nor could the parties respond to such testimony in their final arguments to the Hearing Examiner, because they had not yet received it. The Commission in its Commonwealth Edison Company decision in Docket No.

87-0043, refused to reopen the record to take further evidence hours before it was to vote on a final order, stating that such actions “create an environment that is not conducive to procedural due process, determination of public policy or resolution of issues.” Commonwealth Edison Company, at 579. Requirements to submit final arguments to the Hearing Examiner without first being served with all of the evidence to be considered in the case also impinges the due process rights of the parties.

The Hearing Examiner is required to make a ruling based on the full record of the case. 220 ILCS 5/10-103. Parties submitting final arguments to the Hearing Examiner must also have access to the full record of the case. Otherwise, the testimony of the other parties goes to the Hearing Examiner untested, unchallenged, and in fact, unmentioned by other parties. As stated above, the Commission has held that unrestricted cross-examination and initial and reply briefs protect the due process rights of the parties before it. See id., at 494. These rights are useless if parties are denied the opportunity to challenge any evidence or testimony offered by other parties.

The HEPO was correct to refuse to consider the Staff’s testimony until ComEd made the information that the testimony was based on available to all parties through a confidentiality agreement. HEPO at 17-18. However, the HEPO should have similarly refused to consider the testimony of other parties, where such testimony was not made available to all parties prior to final arguments being submitted to the Hearing Examiner.

Proposed Language:

The following language should be inserted on page 24 of the Proposed Order:

The Commission is unable to consider the testimony submitted with comments to the Hearing Examiner prior to issuing the HEPO. Submitting additional testimony with final arguments to the Hearing Examiner deprives other parties of their rights

to cross-examine the testimony or otherwise respond to or challenge the testimony prior to the HEPO being issued. Therefore, the Commission is unable to rely upon such evidence in issuing any findings on the merits of ComEd's proposal.

Exception No. 5

The HEPO failed to rule upon IIEC's Motion, made pursuant to Section 200.640 of the Commission's Rules of Practice, that the Commission take administrative notice of the record in ICC Docket No. 99-0171, which addressed ComEd's prior proposal for an alternative to Rider PPO-NFF. Its failure to do so deprived the Commission of the opportunity to compare the procedure and record in the instant case with that in the earlier proceeding.

Argument

The truncated schedule of this Docket necessarily limited the volume of evidence available to the Hearing Examiner. Yet, the HEPO declined to take administrative notice of the record in ICC Docket No. 99-0171, which addressed many of the same issues before the Commission in the present case. Order, Docket No. 99-0171, August 24, 1999 at 16. Given the difficulty of addressing all of the issues in this case within the this tight schedule, the record of 99-0171 would give the Commission a useful tool in evaluating the proposed tariff changes. At the very least, the record of 99-0171 would provide the Commission with a synopsis of what it determined to be necessary in order to meet the requirements of Section 16-112(a) of the PUA the last time ComEd submitted a market index based tariff.

The Commission Rules of Practice allows the Commission to take administrative notice of any matter contained in the record of another docketed Commission proceeding. 83 Ill.Adm.Code 200.640(a)(2). The HEPO should have applied this discretion to take administrative notice of the record in ICC Docket No. 99-0171, so that the Commission could determine whether the present ComEd proposal meet the requirements that the Commission set

out last year.

Proposed Language

After Paragraph 3 of Section IV "Commission Conclusions," insert the following paragraph:

The Commission has already addressed the requirements of Section 16-112(a) in ComEd's previous proposal for an alternative to the NFF. Order, Docket No. 99-0171, August 24, 1999, p.16. Central to the Commission's rejection of that proposal, was "the less than robust level of trading on the CINergy market" and higher potential for market manipulation that such a thinly traded market provides. Id. Ultimately, the Commission denied ComEd's Cinergy proposal as not sufficiently developed to adequately establish a nexus between it and ComEd markets. Id. The Commission considers those same factors in its evaluation of ComEd's present proposal.

Exception No. 5

The People take exception to the HEPO's failure to secure approval of the parties to a paper hearing and to the waiver of their right to cross-examination, thereby resulting in a proceeding held in violation of the Public Utilities Act and the Illinois Administrative Procedure Act.

Argument

The Commission Rules of Practice provide for a "paper hearing," in which material issues are resolved on the basis of written pleadings and submissions verified by affidavit. 83 Ill.Adm.Code 200.525(a). The Hearing Examiner's Scheduling Ruling provided for responsive comments which could include expert opinions or evidentiary assertions, if supported by affidavit. As such, the Ruling set out a "paper hearing".

However, in order for a "paper hearing" not to violate the parties' due process right to a full hearing, with introduction and cross examination of evidence and testimony, all parties, the Staff and the Hearing Examiner must stipulate to a waiver of any rights that they have to such a

hearing. See id. Indeed, the Rules also specifically state that cross-examination alone may only be waived in the same manner as above. 83 Ill. Adm. Code 200.615.

The HEPO makes no mention of these waiver requirements, or in any way defends its rejection of the parties' rights to a hearing. As a Proposed Order generated via a violation of the Act, the HEPO is not the product of proper deliberation of the proposal on the merits of the case. Should the Commission approve the HEPO with the flaws described above, such Order is void under Section 10-50(c) of the Illinois Administrative Procedure Act.

Proposed Language

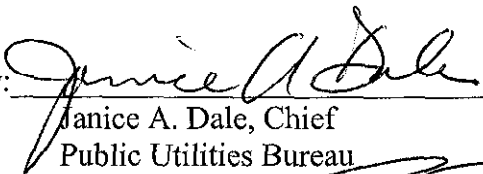
See third paragraph of proposed language for exception #2.

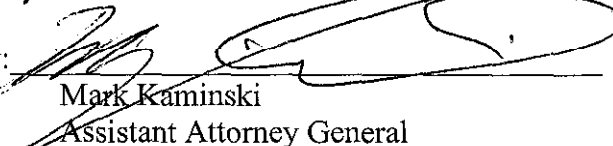
CONCLUSION

WHEREFORE, for the reasons set forth above, the People respectfully request that the Commission modify the Hearing Examiner's Proposed Order in accordance with the arguments made in their Brief on Exceptions and adopt the Proposed Language contained herein.

Respectfully submitted,

THE PEOPLE OF THE STATE OF ILLINOIS
James E. Ryan, Attorney General

By: 
Janice A. Dale, Chief
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By: 
Mark Kaminski
Assistant Attorney General

Dated: April 24, 2000

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

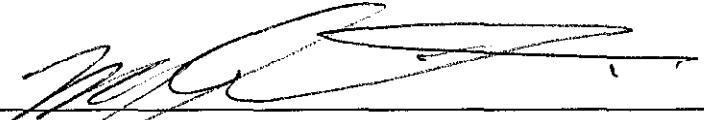
COMMONWEALTH EDISON COMPANY)

Petition for expedited approval of implementation of)
a market-based alternative tariff, to become effective)
on or before May 1, 2000, pursuant to Article IX and)
Section 16-112 of the Public Utilities Act.)

Docket No. 00-0259


NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, April, 24, 2000, we have filed with the Chief Clerk of the Illinois Commerce Commission the enclosed Brief Exceptions of the People of the State of Illinois' in the above-captioned docket by delivering it to United Parcel Service for next day delivery to Donna Caton, Chief Clerk of the Illinois Commerce Commission, at 527 East Capitol Avenue, Springfield, Illinois 62794.


Mark Kaminski
Assistant Attorney General

CERTIFICATE OF SERVICE

I, Mark Kaminski an Assistant Attorney General, hereby certify that I served the above identified documents upon all active parties of record on the attached service list by United States Mail, first class postage prepaid on April 21, 2000.


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